FORM **N-288** (Rev. 1996)

STATE OF HAWAII—DEPARTMENT OF TAXATION Hawaii Withholding Tax Return for Dispositions by Nonresident Persons of Hawaii Real Property Interests

19**97**

Complete Lines 1-6. (Copy A of Form(s) N-288A MUST be attached.)

To Be Completed by the Transferee/Buyer Required to Withhold Name of transferee/buyer Identification number (SSN or FEIN) Address (number and street) City, State, and ZIP code (province, postal code, and country) Description and location of property acquired (Include tax map key number) 3 Date of transfer 4 Number of Forms N-288A attached 5 Amount realized on the transfer 6 Amount Withheld I hereby declare under penalties provided by section 231-36, HRS, that I have examined this return and accompanying attachments, and, to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than individual, partner, fiduciary, or corporate officer) is based on all information of which preparer has any knowledge. Please sign here Signature of transferee/buyer (individual, partner, fiduciary, or corporate officer) Preparer's social security no. Paid Preparer's signature Check if self-employed Preparer's Firm's name (or Federal E.I. No. yours if self-employed)

General Instructions

and address

Purpose of Form

Use Only

A 5% withholding obligation is generally imposed on the transferee/buyer when a Hawaii real property interest is acquired from a nonresident person. This withholding serves to collect tax that may be owed by the nonresident person. Use this form to report and transmit the amount withheld.

Note: You are not required to withhold if any of the exceptions listed on page 2 apply.

Amount To Withhold

Generally, you must withhold 5% of the amount realized on the disposition by the transferor. See *Amount realized* under *Definitions*, later.

Joint Transferors/Sellers.—If one or more nonresident persons and one or more resident persons jointly transfer a Hawaii real property interest, first, determine the amount subject to withholding by allocating the amount realized from the transfer among the transferors/sellers based on their capital contribution to the property. For this purpose, a husband and wife are treated as having contributed 50% each. Second, withhold on the total amount allocated to nonresident transferors/sellers. Third, credit the amount withheld among the

nonresident transferors/sellers as they mutually agree. The transferors/sellers must request that the withholding be credited as agreed upon by the 10th day after the date of transfer. If no agreement is reached, credit the withholding by evenly dividing it among the nonresident transferors/sellers.

Who Must File

A transferee/buyer of a Hawaii real property interest, and a corporation, partnership, or fiduciary that is required to withhold tax must file Form N-288 to report and transmit the amount withheld. If two or more persons are joint transferees/buyers, each of them is obligated to withhold. However, the obligation of each will be met if one of the joint transferees/buyers withholds and transmits the required amount to the State of Hawaii, Department of Taxation.

When To File

A transferee/buyer must report and transmit to the State of Hawaii, Department of Taxation the tax withheld by the 20th day after the date of transfer. Timely mailing of Forms N-288 and N-288A by U.S. mail will be treated as timely filing.

Where To File

Zip code

File Form N-288 with the amount withheld, and Copy A of Form(s) N-288A, with the appropriate taxation district office.

OAHU DISTRICT OFFICE

P.O. BOX 1530 HONOLULU, HAWAII 96806-1530

MAUI DISTRICT OFFICE

P.O. BOX 913 WAILUKU, HAWAII 96793-0913

HAWAII DISTRICT OFFICE

P.O. BOX 1377 HILO, HAWAII 96721-1377

KAUAI DISTRICT OFFICE

P.O. BOX 1688 LIHUE, HAWAII 96766-5688

Forms N-288A Must Be Attached

Anyone who completes Form N-288 must also complete a Form N-288A, Statement of Withholding on Dispositions by Nonresident Persons of Hawaii Real Property Interests, for each nonresident transferor/seller subject to withholding.

If two or more nonresident transferors/sellers jointly transfer a Hawaii real property interest, prepare a separate Form N-288A for each nonresident transferor/seller. One Form N-288A should be filed for a husband and wife if they will be filing a joint return for the year in which they transferred their Hawaii real property interest. Copy A must be attached to Form N-288. Copy B must be sent to the transferor/seller. Copy C is for your records. To receive credit for the amount withheld, the transferor/seller must file a Hawaii income tax return (Form N-15 or N-30).

Penalties

In addition to the penalties provided under section 231-36, HRS, for false and fraudulent statements, if a person is required but fails to withhold tax under section 235-68, HRS, that person is made liable for the tax.

Definitions

Nonresident person means every person other than a resident person.

Property or **real property** has the meaning as the same term is defined in section 231-1, HRS.

Resident person means any individual included in the definition of "resident" in section 235-1, HRS; any corporation incorporated or granted a certificate of authority under Chapter 415, 415A, or 415B, HRS; any partnership formed or registered under Chapter 425 or 425D, HRS; any foreign partnership qualified to transact business pursuant to Chapter 425 or 425D, HRS; or any trust included in the definition of "resident trust" in section 235-1, HRS; or any estate included in the definition of "resident estate" in section 235-1, HRS.

Transferee/Buyer means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

Transferor/Seller means any person disposing real property which is located in Hawaii.

Amount realized means the sum of the cash paid, or to be paid (not including interest or original

issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee/buyer or to which the Hawaii real property interest is subject to immediately before and after the transfer. Generally, the amount realized, for purposes of this withholding, is the sales or contract price.

Date of transfer means the first date on which consideration is paid or a liability is assumed by the transferee/buyer. Payment of consideration does not include the payment, before the passage of legal or equitable title (other than pursuant to an initial purchase contract), of earnest money, a good-faith deposit, or any similar sum primarily intended to bind the parties to the contract and subject to forfeiture. However, a payment that is not forfeitable may nevertheless be found to constitute earnest money, a good-faith deposit, or a similar sum.

An individual's **Identification number** is the social security number. For any other person, it is the federal employer identification number.

Exceptions

You are not required to withhold if the transferor/seller furnishes to you Form N-289, Certification for Exemption from the Withholding of Tax on the Disposition of Hawaii Real Property, stating that:

- 1) The transferor/seller is a resident person, or
- 2) That by reason of a nonrecognition provision of the Internal Revenue Code as operative under Chapter 235, HRS, or the provisions of any United States treaty, the transferor/seller is not required to recognize any gain or loss with respect to the transfer, or
- 3) For the year preceding the date of the transfer the property has been used by the transferor/seller as a principal residence, and that the amount realized for the property does not exceed \$300,000.

If you receive a certification, the withholding tax cannot be collected from you, unless you knew that the certification was false. The certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or equivalent fiduciary of a trust or estate.

Belated notice or false certification.—If after the date of transfer you receive notice that the certification you received is false, you can rely on the certification and not withhold on consideration paid before you received the notice. However, you must withhold the full 5% of the amount realized from any consideration that remains to be paid, if possible. You must do so by withholding and paying over the entire amount of each successive payment of consideration until the full 5% has been withheld and paid to the State of Hawaii, Department of Taxation. These amounts must be reported and transmitted to the State of Hawaii, Department of Taxation by the 20th day following the date of each payment.

Withholding Certificate Issued by the Department of Taxation

A withholding certificate may be issued by the State of Hawaii, Department of Taxation to reduce or eliminate withholding on dispositions of Hawaii real property interests by nonresident persons. The certificate may be issued if 1) the transferor/seller will not realize any gain with respect to the transfer, or 2) there will be insufficient proceeds to pay the withholding required after payment of all costs.

Attach a copy of the approved Form N-288B, Application for Withholding Certificate for Dispositions by Nonresident Persons of Hawaii Real Property Interests.

Specific Instructions

Lines 1.—Enter the name and identification number (social security number or federal employer identification number) of the transferee/buyer. Enter the home address of an individual or the office address of an entity.

Lines 2.—Enter a description of the property including its location and the nature of any substantial improvements, such as an apartment building or warehouse. Include the tax map key number.

Line 5.—Enter the amount realized. If the transferor/seller is reporting the gain under the installment method, (i.e., agreement of sales or purchase money mortgages) enter the principal portion of the total payments for the year.

Line 6.—Enter the amount withheld. If the amount required to be withheld has been reduced or waived by the Department of Taxation, attach a copy of the approved Form N-288B. Also, if one or more of the transferors/sellers are exempt from the withholding and you are issuing the exempt transferor/seller a Form N-288A, attach a copy of the exempt transferor/seller's Form N-289.